



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 10, 2017
MAHS Docket No.: 16-018473
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 17, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 5-37).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 1, pp. 287-290) informing Petitioner of the denial.

5. On December [REDACTED] Petitioner requested a hearing disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Petitioner was a 27-year-old male.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner's highest education year completed was the 8th grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability, in part due to various psychiatric restrictions.
11. Petitioner is capable of performing sufficiently available employment despite restrictions.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

It should be noted that Petitioner's hearing request listed an authorized hearing representative (AHR). Petitioner's AHR did not appear for the hearing. Petitioner agreed to waive the right to representation and the hearing proceeded accordingly.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (January 2012), p. 1. A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

Petitioner requested a hearing to dispute the denial of an SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 287-290) dated November 15, 2016, verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months [90 days for SDA eligibility]. 20 CFR 416.905.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

Petitioner testified he had full-time employment with a recycling plant until he resigned in April 2016. Evidence of Petitioner's wages were not presented. For purposes of this decision, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Hospital crisis center office visit documents (Exhibit 1, pp. 243-246) dated [REDACTED] were presented. It was noted Petitioner reported symptoms of anxiety and depression. A GAF of 55 was noted. Zoloft was prescribed.

Hospital crisis center office visit documents (Exhibit 1, pp. 232-235) dated [REDACTED] were presented. It was noted Petitioner reported "bad anxiety" around others. Two prior visits for similar reasons were noted. Mental health examination assessments

included fair tolerance frustration, mild impulsivity, and limited judgment. Celexa was prescribed. It was noted that there was no evidence of deterioration.

Hospital crisis center office visit documents (Exhibit 1, pp. 236-242) dated [REDACTED], [REDACTED] were presented. It was noted Petitioner attempted suicide via Benadryl pills overdose. It was noted Petitioner used THC. Ongoing anxiety symptoms were reported. Petitioner was deemed a danger to himself. A transfer to a psychiatric hospital was implied.

Psychiatric hospitalization documents (Exhibit 1, pp. 203-226) from an admission dated [REDACTED], were presented. It was noted Petitioner quit his job of 3 years in April 2016. It was noted Petitioner was not compliant with medication or outpatient treatment at the time. Petitioner received various medications during his admission. It was noted Petitioner's sleep, social interactions, and mood improved over hospitalization. A discharge date of [REDACTED], was noted. A plan of outpatient mental health agency treatment was noted. Celexa and Seroquel were prescribed at discharge (see Exhibit 1, p. 277).

A psychiatric assessment (Exhibit 1, pp. 160-161) dated [REDACTED], was presented. Diagnoses of bipolar disorder (type I), generalized anxiety disorder, cannabis abuse, and generalized social phobia were stated. Petitioner's GAF was noted to be 45.

An Integrated Biopsychosocial Assessment dated [REDACTED] (Exhibit 1, pp. 189-201) was presented. The assessment was completed by a social worker from a newly-treating mental health agency. Reported symptoms of sadness, mood swings, irritability, avoiding social interactions, and negativity were noted. It was noted Petitioner began smoking cannabis to reduce mental symptoms, but it is making things worse. A recommendation of utilizing the agency's services was noted.

A Psychiatric Evaluation (Exhibit 1, pp. 184-188) dated [REDACTED], was presented. Petitioner reported lifelong depression, worse in the last 12 months. Other reported symptoms included paranoia, anxiety, and difficulty getting along with others. Notable mental health examination assessments included blunt affect and "somewhat poor" concentration. A fair prognosis, with treatment, was noted.

Psychiatrist office visit notes (Exhibit 1, pp. 178-183) dated [REDACTED] were presented. Petitioner reported ongoing paranoia and a decrease in depression. Petitioner reported Seroquel was not helping. Petitioner's medications were adjusted.

Psychiatrist office visit notes (Exhibit 1, pp. 157-162) dated [REDACTED], were presented. It was noted Petitioner was stabilized on medication. Petitioner's mental illness was noted to be severe but stable. All mental health examination assessments were unremarkable and/or normal. Medications were continued. Added treatment goals of reducing depression, better sleep, and reducing anxiety and racing thoughts (see Exhibit 1, p. 163-167) were noted.

A Treatment Plan Formal Review (Exhibit 1, pp. 152-156) dated [REDACTED], were presented. Continued goals of psychiatric visits, social worker visits, and medication compliance were noted.

Psychiatrist office visit notes (Exhibit 1, pp. 148-) dated [REDACTED], were presented. It was noted Petitioner was stable while in treatment, with no side effects or symptoms. Impulse and judgment were adequate. All mental health examination assessments were unremarkable and/or normal. Medications were continued.

Psychiatrist office visit notes (Exhibit 1, pp. 148-151) dated [REDACTED] were presented. It was noted Petitioner was stable while in treatment, with no side effects or symptoms. Impulse and judgment were adequate. All mental health examination assessments were unremarkable and/or normal. Medications were continued.

Psychiatrist office visit notes (Exhibit 1, pp. 140-147) dated [REDACTED], were presented. Prescribed medications included Celexa and Seroquel. Petitioner reported ongoing depression and sleep difficulties. Mental examination assessments were all unremarkable. Medications were increased.

A mental status examination report (Exhibit 1, pp.169-173) dated [REDACTED], was presented. The report was signed by a limited-licensed psychologist and co-signed by a licensed psychologist. Petitioner reported symptoms of a fear of social interactions, mental stress, racing thoughts, and anxiety. Petitioner reported hallucinations which are "saying bad things"; though it was noted that they did not command him to hurt himself or others. A "long history" of smoking marijuana was noted. Mental health assessments included in-touch with reality, somewhat constricted affect, and logical stream of mental `abuse. Diagnoses of anxiety disorder (stable with medication), major depression, chronic cannabis abuse, and learning disability disorder (by report) were noted. A fair prognosis was given.

Petitioner testimony conceded he has no physical/exertional restrictions. Petitioner testimony alleged he has numerous psychological restrictions.

Petitioner testified he gets weekly panic attacks. Petitioner testified each attack begins with sweating. Petitioner testified he may get tongue-tied when talking to others due to anxiety.

Petitioner's social worker testified Petitioner is enrolled in a program for persons with "severe and persistent" mental illness. Petitioner's social worker testified her agency visits Petitioner twice per week at Petitioner's home. Petitioner's social worker stated the appointments are typically 30-60 minutes long and completed for the purpose of checking Petitioner's mental health and medication compliance. Petitioner's social worker stated that Petitioner is not always medication compliant. Petitioner testified visits sometimes include instructions for coping with anxiety (e.g. breathing techniques);

Petitioner testified the techniques do not work. Petitioner's social worker also testified Petitioner's treatment includes biweekly appointments with a psychiatrist. Petitioner testified his currently prescribed medications include Seroquel, Celexa, and Neurontin.

Petitioner testified he has difficulty getting out of bed. Petitioner testified he sometimes does not want to shower or leave his residence. Petitioner testified he sometimes feels hopeless. Petitioner testified his medications help him sleep but do little to enhance his mood.

Presented medical records generally verified a medical treatment history consistent with Petitioner's allegations of restrictions. The treatment history was established to have lasted at least 90 days and at least since Petitioner's date of SDA application. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Petitioner's primary diagnosis was depression and/or bipolar disorder. Both disorders are affective disorders covered by Listing 12.04 which reads as follows:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
- a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration

OR

- C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

On [REDACTED], Petitioner's GAF was noted to be 45. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Petitioner's GAF was indicative of marked restrictions.

Presented evidence was indicative that Petitioner had marked restrictions in May 2016, the month he attempted suicide. Presented records were less indicative of marked restrictions in the months preceding and proceeding May 2016.

Petitioner was working full-time through March 2016 and for part of April 2016. Petitioner's employment is highly indicative of not meeting listing requirements (though evidence was not sufficient to rule with certainty that Petitioner had SGA earnings).

Presented evidence recurrently noted Petitioner's marijuana abuse. Presented documents and testimony indicated Petitioner's marijuana usage aggravated Petitioner's mental health symptoms. This is indicative that psychological illness, by itself, causes marked restrictions.

Petitioner testimony also conceded he was not on medication during the time of his psychiatric admission. Presented records recurrently indicated stability of symptoms while Petitioner is medication and treatment complaint. Unremarkable mental health assessments were consistently noted following May 2016. This consideration is suggestive that Petitioner did not experience marked restrictions for a 90 day period since applying for SDA benefits.

It is found that Petitioner failed to establish meeting (or equaling) a SSA listing. Accordingly, the analysis moves to the fourth step.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a petitioner can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified he earned SGA from working for a recycling center. Petitioner testified his job was to sort recyclable items into bins. Petitioner testified he quit his employment due to fear of his safety. Petitioner testified he was concerned about broken glass, rats, and other various issues.

Petitioner's anxiety would reasonably preclude Petitioner from performing past, relevant employment. It is found Petitioner cannot perform past employment and the disability analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s). The medical-vocational rules are not applicable in the present case as Petitioner alleged only non-exertional symptoms.

Petitioner testified he has not looked for employment since quitting his job in April 2016. Petitioner testified he is unable to work, in part, because he lacks the social skills to deal with people. Petitioner testified he fears crowds. Petitioner also stated he lacks transportation and is unable to even afford bus fare. Petitioner's testimony was somewhat indicative of an inability to perform any employment. Petitioner's testimony also implied that financial problems, not disability, contribute to petitioner's ongoing unemployment.

Petitioner testimony expressed difficulty being around people. Petitioner also testified he has friends and that he sometimes visits them. Petitioner also testified he is capable of walking to his uncle's house.

The only physician statement of restriction came from a consultative psychologist on [REDACTED]. The psychologist opined Petitioner "should not have any problems" doing routine work at a sustained pace" as long as he remains medication compliant. The opinion is consistent with Petitioner's symptom stability while medication compliant and the lack of abnormal mental health assessments.

It is notable that Petitioner lives alone. Petitioner also testified he is able to complete his own food shopping. This consideration is indicative that Petitioner's impairments do not prevent the performance of daily activities. Generally, an ability to perform daily activities is consistent with impairments not precluding employment.

It is found Petitioner is capable of employment which is not significantly reliant on social interactions (e.g. customer-service jobs). Employment within Petitioner's capabilities would include hotel housekeeping, certified nursing care, physical laborer, construction work, and maintenance jobs. MDHHS did not present evidence of jobs available to Petitioner though Petitioner's restriction is not deemed to be so significant that it is probable that insufficient employment is available to Petitioner.

It is found that Petitioner is not disabled. Accordingly, it is found that MDHHS properly denied Petitioner's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA benefit application dated [REDACTED], based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.

CG/hw



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]